



**The Comptroller General
of the United States**

Washington, D.C. 20548

Decision

Matter of: DJ Enterprises, Inc.

File: B-233410

Date: January 23, 1989

DIGEST

1. Contention that awardee failed to meet definitive responsibility criteria is without merit where awardee submitted information from which the contracting officer reasonably could conclude that the awardee met the criteria. The relative quality of the information and the need for further investigation are within the discretion of the contracting officer.

2. The General Accounting Office will not review an affirmative determination of responsibility absent a showing of possible fraud or bad faith on the part of the procurement officials or that definitive responsibility criteria in the solicitation were misapplied.

DECISION

DJ Enterprises, Inc., protests the award of a contract to H&W Electronics, Inc., under invitation for bids (IFB) No. BEP-88-24(A), issued by the Bureau of Engraving and Printing, Department of the Treasury, for the installation and maintenance of a closed circuit television system. DJ asserts that H&W did not meet the definitive responsibility criteria set forth in the solicitation and that it is generally not a responsible contractor. DJ, which submitted the fourth low bid, also alleges that the second and third low bids should have been rejected.

We deny the protest in part and dismiss it in part.

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The IFB, a total small business set-aside, was issued on May 23, 1988. Paragraph L.5 provides:

"The contractor shall have maintained a service organization for at least five years, performing maintenance programs and emergency service on Closed Circuit Television (CCTV) system and/or other substantially similar systems. In additions, the contractor shall submit with his/her bid a list of five customers reference locations where he/she has provided full service on a year round basis."

Bids were opened on July 1, 1988, and three bids were received. A fourth bid, which was not low, was received late. H&W submitted the low bid. The agency then began a pre-award survey of H&W during which H&W submitted evidence to demonstrate compliance with paragraph L.5. H&W stated that although it was a new company, its principal officers had the requisite experience under the IFB. H&W stated that its president had managed H&W, a service organization performing preventive maintenance and service on a variety of video and electronic equipment, for the past 4 years. Before that, he managed an electrical engineering department for the construction of power plants for almost 10 years. The vice-president, prior to his 2 years of experience with H&W, was employed for 20 years by a major electronic corporation where he was responsible for the assembly and final testing of electronic numerical control systems. H&W also submitted a list of five customers for which it had provided maintenance and service for various video or electronic systems. The agency found H&W to be responsible and, on October 21, awarded the contract to that firm. This protest followed.

Generally, our Office will not review a contracting officer's affirmative determination of responsibility unless there is a showing of possible fraud or bad faith on the part of procurement officials or that definitive responsibility criteria in the solicitation were misapplied. 4 C.F.R. § 21.3(m)(5) (1988). A solicitation requirement, as here, that the prospective contractor have a specified number of years of experience is such a definitive responsibility criteria. Topley Realty Co., Inc., 65 Comp. Gen. 510 (1986), 86-1 CPD ¶ 398. However, where an allegation is made that definitive responsibility criteria have not been satisfied, the scope of our review is limited to ascertaining whether sufficient evidence of compliance has been submitted from which the contracting officer reasonably could conclude that the criteria have been met. The

relative quality of the evidence is a matter for the judgment of the contracting officer. Allen-Sherman-Hoff Co.--Request for Reconsideration, B-231552.2, Sept. 1, 1988, 88-2 CPD ¶ 202. The extent to which investigation may be required is a matter for the contracting officer to determine, not for our Office. Id.

Here, we find that the awardee submitted sufficient evidence from which the contracting officer reasonably could conclude that the criteria had been met. H&W demonstrated that its two principal officers have more than 35 years of experience in the field of electrical/electronic engineering and technology. In this regard, an agency may properly consider the experience of a predecessor firm or of the corporation's principal officers which was obtained prior to incorporation date. R.J. Crowley, Inc., B-229559, Mar. 2, 1988, 88-1 CPD ¶ 220. As stated above, H&W also submitted a list of five customer locations where it has provided maintenance and service for video and electronic systems. Accordingly, the agency had a reasonable basis to conclude that H&W met the solicitation's definitive responsibility criteria.

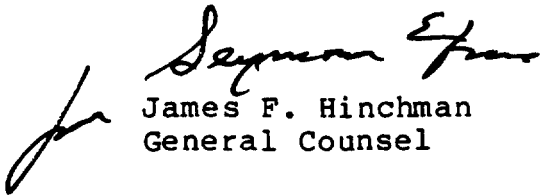
Next, DJ challenges H&W's ability to comply with various IFB statement of work provisions, such as a provision requiring contractor employees to obtain security clearances prior to commencement of work, and various personnel experience requirements. DJ also alleges that H&W cannot perform the work since it offered an unrealistically low price.

These allegations generally challenge H&W's ability to perform the contract at the price offered, which is a matter of the contractor's responsibility. As stated above, our Office will not review a contracting officer's affirmative determination of responsibility unless, as pertains here, there is a showing of possible fraud or bad faith on the part of procurement officials. TLC Systems, B-231969, Sept. 13, 1988, 88-2 CPD ¶ 238. There is no evidence in the record to indicate fraud or bad faith on the part of procurement officials. Thus, to the extent that DJ is arguing that H&W will not be able to successfully perform the contract, this ground of protest is dismissed.

DJ also alleges that H&W failed to execute the IFB's Walsh-Healey Act representation. We simply note that the record indicates that H&W did, in fact, certify that it is a

regular dealer of the supplies offered or required by the IFB. Finally, DJ alleges that the agency should have rejected the other bids submitted as nonresponsive. We need not address this argument because the protester has not shown that the award to the low bidder was improper.

Accordingly, the protest is denied in part and dismissed in part.

James F. Hinchman
General Counsel